

REMARKS

The Examiner's comments in the Office Action dated July 31, 2008, in the form of a Restriction Requirement have been carefully reviewed. However, the Examiner's attention is respectfully requested to the Preliminary Amendment submitted on February 25, 2005, for the present application wherein original claims 1-23 were cancelled and their subject matter was embraced by new claims 24-51. Further, the Examiner's attention is also respectfully requested to the claim amendments to claims 22-24 and 51 herein.

In the Restriction Requirement, the Examiner has required election of certain claims to be prosecuted at this time. Essentially, the Examiner is making the argument that five distinct inventions are being claimed. The Examiner has grouped these inventions as follows:

Group I, including original claims 1-19 (embraced by claims 24-45 and 51), drawn to a foaming ingredient;

Group II, including original claim 20 (embraced by claim 46), drawn to a creamer with a foaming ingredient;

Group III, including original claim 21 (embraced by claim 47), drawn to a cappuccino with a foaming ingredient;

Group IV, including original claim 22 (embraced by claim 48), drawn to a milkshake with a foaming ingredient; and

Group V, including original claim 23 (embraced by claims 49-50), drawn to a method of making a foaming ingredient.

The Examiner asserts that the claims lack unity because the inventions listed in Groups I through V do not relate to a single general inventive concept because they lack the same or corresponding special technical features. Applicants respectfully disagree with the Examiner at least as to this assertion between Groups I through IV for the reasons discussed herein.

Group I of the present invention (consisting of claims 24-45 and 51) is directed to a foaming ingredient consisting essentially of one or more proteins forming the wall of vacuoles that comprise entrapped gas. Groups II through IV of the present invention (consisting of amended claims 46, 47, and 48, respectively) are directed to the same essential feature, the foaming ingredient of independent claim 24, wherein the foaming ingredient is comprised in a creamer, an instant cappuccino, and an instant milkshake, respectively. As

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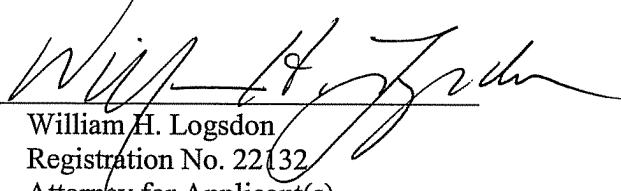
such, Applicants respectfully traverse the restriction of Groups I through IV on the grounds that Applicants believe a search with respect to Group I would be co-extensive with a search directed toward Groups II-IV and, therefore, would not pose an undue burden on the Examiner. However, should the Examiner maintain the restriction requirement as to Groups I through IV, Applicants provisionally elect Group I, claims 24-45 and 51, directed to a foaming ingredient consisting essentially of one or more proteins forming the wall of vacuoles that comprise entrapped gas for initial examination.

In view of the foregoing, withdrawal of the restriction requirement between Groups I through IV is respectfully requested. However, Applicants reserve their right to file a divisional application or take such other appropriate measures as they deem necessary to protect the inventions lying within Groups II through V.

Respectfully submitted,

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